SUBCHAPTER 1. GENERAL PROVISIONS

6A:14-1.3 Definitions
Words and terms, unless otherwise defined below, when used in this chapter, shall be defined in the same manner as those words and terms are defined and used in the IDEA (20 U.S.C. §§ 1400 et seq.) and its implementing regulations at 34 CFR Part 300, which terms are incorporated by reference herein.

“Virtual instruction” means the same as that term is defined pursuant to N.J.A.C. 6A:32-1.1.

SUBCHAPTER 3. SERVICES

6A:14-3.9 Related services
(a) Related services, including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services, and speech-language services, shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals, as specified in the student’s IEP and according to the following:

1.-3. (No change.)
4. Occupational therapy and physical therapy may be provided by therapy assistants under the [direction] supervision of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules.

i.-ii. (No change.)
5.-12. (No change.)
(b) (No change.)

(c) Related services required by the student’s IEP may be provided through virtual instruction, as appropriate, and pursuant to the following conditions:

1. The student is confined to the home or another out-of-school setting due to a temporary or chronic health condition or a need for treatment that precludes participation in the student’s usual educational setting, pursuant to N.J.A.C. 6A:16-10.
   i. To request virtual related services due to a temporary or chronic health condition, the parent shall submit to the school district a request that includes a written order from the student’s physician verifying the projected need for confinement at the student’s residence or other treatment setting for more than 10 consecutive school days or 20 cumulative school days during the school year.
   ii. The school district shall forward the written determination to the school physician, who shall verify the student’s need for virtual related services. The school physician may contact the student’s physician to secure additional information concerning the student’s diagnosis or need for treatment and shall either verify the need for virtual related services or shall provide to the district board of education the reason(s) for denial.
   iii. The school district shall notify the parent concerning the school physician’s verification or reason(s) for denial within five school days after the school district’s receipt of the written determination by the student’s physician.
   iv. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person.

vi. When the provision of home or out-of-school instruction exceeds 30 consecutive days in a school year, the IEP team shall convene a meeting to review the continued need for virtual related services and, if appropriate, revise the student’s IEP.

2. A school building or school district is closed pursuant to N.J.S.A. 18A:7F-9.b or c and the school district has implemented its program of virtual or remote instruction pursuant to N.J.A.C. 6A:32-13; or

3. The appropriate local health agency or officer or the student’s physician determines that the student requires a mandatory period of isolation/quarantine for at least five days because the student’s presence in school may jeopardize the health of others because the student has contracted a communicable disease or has been exposed to a communicable disease.
   i. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person.

SUBCHAPTER 5. PROVIDING EDUCATIONAL AND RELATED SERVICES

6A:14-5.1 General requirements
(a)-(b) (No change.)
(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. For the related services listed at (c)iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. All instructional, child study team, and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team, and related services personnel provided by approved clinics and agencies, or private professional practitioners, may, if a certification is required for the discipline [under] pursuant to which they are providing services, provide services [under] pursuant to this subsection if certified through the emergency certification process.
   1. For public school students:
      i.-ii. (No change.)
      iii. Related services;
         (1) (No change.)
         (2) Physical therapy assistants shall work [in the presence and] under the supervision of a certified physical therapist.
         (3) (No change.)
         iv.-v. (No change.)
         2. (No change.)
         (d)-(e) (No change.)

HUMAN SERVICES

(a)
DIVISION OF DEVELOPMENTAL DISABILITIES
Contribution to Care and Maintenance Requirements
Proposed Readoption with Amendments: N.J.A.C. 10:46D

Authorized By: Sarah Adelman, Commissioner, Department of Human Services.
Calendar Reference: See Summary below for explanation of exception to calendar requirements.
The Department of Human Services (Department) proposes to readopt N.J.A.C. 10:46D, Contribution to Care and Maintenance Requirements, with amendments. Chapter 46D establishes guidelines and criteria for determining the financial ability of individuals served by the Division of Developmental Disabilities (“Division” or “DDD”) and that of their legally responsible relatives to contribute to the cost of care and maintenance when the individual receives residential services from the Division.

The Department adopted N.J.A.C. 10:46D, Contribution to Care and Maintenance Requirements, as new rules, effective December 15, 2003. The Division readopted the chapter in 2009 and 2016. The chapter was scheduled to expire on October 25, 2023; however, pursuant to N.J.S.A. 52:14B-5.1(c), the expiration date is extended 180 days to April 22, 2024. N.J.S.A. 30:4-60 requires the Department to determine if a person receiving residential services from the Division, or his or her legally responsible relatives, possesses sufficient income, assets, resources, or estate to pay for, or make payment towards, his or her maintenance.

The Division has reviewed this chapter, and has found that, with the proposed amendments, the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated.

The Department is providing a 60-day comment period on this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

A summary of the rules proposed for readoption with amendments follows.


N.J.A.C. 10:46D-1.1 sets forth the purpose of the chapter to establish guidelines and criteria for determining the financial ability of individuals, or their legally responsible relatives, to contribute to the cost of care and maintenance when the individual receives residential services from the Division. The Division is proposing technical amendments to this section to update the term Community Care “Waiver” to Community Care “Program,” which is the name of the Medicaid program through which services are now provided in licensed residential settings.

N.J.A.C. 10:46D-1.2 sets forth the scope of the chapter. The Division proposes to add language to reflect that the provisions of this chapter do not apply to individuals whose services are funded through Medicaid fee-for-service in which the State receives a Federal match. This proposed language clarifies the existing practice. As these individuals’ services are not funded through a contract with the Division, they do not pay contribution to care to the Division. Rather, they pay a portion of their gross monthly income directly to the residential provider for rent, plus an additional amount for other costs as determined by the terms of the service agreement between the individual and the residential provider. The Division is also proposing to update Community Care “Waiver” to Community Care “Program.”

N.J.A.C. 10:46D-1.3 provides the definitions for the terms used in the chapter. The Division added a definition for the term “Division” or “DDD” to clarify all references to the Division of Developmental Disabilities. The Division added language to the definition of “cost of care and maintenance” that will clarify that cost of care and maintenance requirements apply to individuals served by the Division who are receiving residential-based services. This corrects an oversight made when the rules were last promulgated in 2016. The Division is also proposing to update Community Care “Waiver” to Community Care “Program.” Finally, the Division proposes to correct a typographical error in the statutory citation within the definition of “assets or resources.”
Agriculture Impact Statement
The rules proposed for readoption with amendments will not have an impact on agriculture in the State of New Jersey.

Regulatory Flexibility Statement
A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments govern the payment of contribution to care to the Division for individuals receiving residential services funded by the Division, and do not impose reporting, recordkeeping, or other compliance requirements upon small businesses, as defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While the rules allow provider agencies who operate licensed residential settings, some of whom may be small businesses, to choose to collect the payments, provider agencies are not generally involved in the process governed by the rules, particularly following the transition from funding through contract reimbursement to Medicaid fee-for-service.

Housing Affordability Impact Analysis
There is an extreme unlikelihood that the rules proposed for readoption with amendments will have an impact on the affordability of housing in New Jersey or evoke a change in the average costs associated with housing because the rules concern contribution to care and maintenance for individuals receiving services from the Division.

Smart Growth Development Impact Analysis
The rules proposed for readoption with amendments concern the contribution to care and maintenance for individuals served by the Division. Therefore, there is an extreme unlikelihood that the rules will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact
The Department of Human Services evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:46D.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS
10:46D-1.1 Purpose; authority
(a) Pursuant to N.J.S.A. 30:6D-1 (P.L. 1995, c. 155), the Division of Developmental Disabilities, Department of Human Services[,] (Division) has established guidelines and criteria for determining the financial ability of persons served and that of their legally responsible relatives to contribute to the cost of care and maintenance when the individual receives residential services from the Division. The individual is also required to apply for all benefits, primarily the Medicaid DDD Community Care [Waiver] Program, for which they are eligible and comply with the requirements of this program prior to residential placement by the Division. He or she is also required to maintain eligibility for these benefits in compliance with the requirements of this chapter.
(b) The individual is responsible to maintain those benefits. Generally, to remain eligible, the individual cannot have more than $2,000 in cash assets that are not excludable as a resource. The Division’s Community Care [Waiver] Program is a Medicaid program, which provides Federal financial participation for services. It is, therefore, necessary for individuals to apply for the Medicaid DDD Community Care [Waiver] Program prior to the receipt of these services, to maximize Federal funds for program expansion for individuals not yet being offered services.

SUBCHAPTER 2. FINANCIAL CRITERIA
10:46D-2.1 General standards
(a) The individual or his or her legally responsible relative shall be responsible to apply for the Medicaid DDD Community Care [Waiver] Program and to maintain eligibility for these benefits. The individual, or his or her legally responsible relative, shall also submit complete financial information necessary to assess contribution to care prior to placement or the delivery of services by the Division.
(b) The individual, or his or her legally responsible relative, shall be responsible to comply with all requirements to maintain continued eligibility for the Medicaid DDD Community Care [Waiver] Program benefits during the time services are provided by the Division.
(c) At the time of an offer of placement, the individual, legal guardian, and/or his or her LRR(s) shall be advised, in writing, by Division staff that it will be necessary to apply for the Medicaid DDD Community Care [Waiver] Program and all other benefits and to submit financial information in order for the Division to determine the ability of the individual and/or LRR(s) to contribute to the cost of care.
(d)-(i) (No change.)
(j) Should an individual be residentially placed by the Division on an emergency basis, the information required for a financial determination is due [at the regional office for the area in which the placement is located] to the Division no more than 28 days following the date of placement. If the information is not provided within the required time frames, the Division may consider the individual’s circumstances on a case-by-case basis. Failure to provide the required documentation may result in the Department seeking any of the remedies set forth in N.J.A.C. (10:46D-5.1.)
10:46D-2.2 Determination of financial ability to pay
(a) The individual, or his or her legally responsible relative, shall be required to apply for the Medicaid DDD Community Care [Waiver] Program and all other benefits and to provide financial information, including, but not limited to, assets, resources, income, or insurance. The individual, or his or her legally responsible relative, shall comply with all requirements of the Medicaid DDD Community Care [Waiver] Program and N.J.A.C. 10:46D-1.1 to maintain eligibility for benefits.
(b)-(j) (No change.)

SUBCHAPTER 6. APPEALS PROCESS
10:46D-6.1 Appeals
(a) (No change.)
(b) Any change to unearned income or income from wages shall not be a basis for an appeal. Changes to income shall be addressed according to N.J.A.C. 10:46D-2.2(h)(i). (No change.)
(c)-(i) (No change.)